

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-AT-341
)	
Horne Radio, LLC)	NAL/Acct. No. 200332480003
Licensee of Radio Station WMTN,)	
Morristown, Tennessee)	FRN 0004-3408-99
Knoxville, Tennessee)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 3, 2002

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Horne Radio, LLC (“Horne”), licensee of radio station WMTN, Morristown, Tennessee, apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 73.1745(a) of the Commission’s Rules.¹ Specifically, we find Horne Radio, LLC apparently liable for failure to reduce power at sunset.

II. BACKGROUND

2. On July 30, 2002, an agent from the FCC Enforcement Bureau’s Atlanta Field Office monitored WMTN’s signal. Field strength measurements revealed that WMTN did not reduce power at sunset as required by the station authorization. WMTN stayed at daytime power until 11:00 pm EDT, at which time monitoring was discontinued. Local sunset is 8:45 pm EDT in July.

3. On July 31, 2002 an agent of the Atlanta Field Office again monitored WMTN’s signal. Field strength measurements revealed that WMTN did not reduce power at sunset as required. WMTN stayed at daytime power until 11:00 pm EDT, at which time monitoring was discontinued.

4. On September 12, 2002, WMTN’s general manager stated he was aware of the station’s overpower operation in July and that the station’s transmitter control system was inoperative and the operator on duty had failed to lower the station’s power at sunset.

¹ 47 C.F.R. §§ 73.1745(a)

III. DISCUSSION

5. Section 73.1745(a) of the Rules states that no broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license. WMTN operated with daytime power on July 30 and July 31, 2002 during nighttime hours until 11:00 pm EDT.

6. Based on the evidence before us, we find that on July 30 and 31, 2002, Horne Radio, LLC willfully² and repeatedly³ violated Section 73.1745(a) of the Commission's Rules by failing to reduce power at sunset.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amounts for failing to reduce power (exceeding power limits) is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the statutory factors listed above, this case warrants a \$4,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Horne Radio, LLC is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 73.1745(a) of the Rules by failing to reduce power at sunset.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Horne Radio, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503 (b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Horne Radio, LLC, Post Office Box 24250, Knoxville, TN 37933.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director
Atlanta Office, Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.

Attachment